

ORIGINAL

DIVISION OF CONSUMER ADVOCACY  
Department of Commerce and  
Consumer Affairs  
335 Merchant Street, Room 326  
Honolulu, Hawaii 96813  
Telephone: (808) 586-2800

PUBLIC UTILITIES  
COMMISSION

2009 DEC 11 P 3:15

FILED

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
PUBLIC UTILITIES COMMISSION	)	DOCKET NO. 2008-0274
	)	
Instituting a Proceeding to Investigate	)	
Implementing a Decoupling Mechanism for	)	
Hawaiian Electric Company, Inc., Hawaii	)	
Electric Light Company, Inc., and Maui	)	
Electric Company, Limited	)	

**DIVISION OF CONSUMER ADVOCACY'S**  
**COMMENTS ON HECO'S MOTION FOR INTERIM APPROVAL OF A DECOUPLING**  
**MECHANISM FOR HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC**  
**LIGHT COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED**

**I. BACKGROUND.**

On October 24, 2008, the Commission issued its Order Initiating Investigation ("Initiating Order") to examine implementing a decoupling mechanism for the HECO Companies<sup>1</sup> and ordered the Parties<sup>2</sup> to file a joint proposal on decoupling that

<sup>1</sup> The HECO Companies consist of Hawaiian Electric Company, Inc. ("HECO"), Hawaii Electric Light Company, Inc. ("HELCO"), and Maui Electric Company, Ltd. ("MECO").

<sup>2</sup> As identified in its October 24, 2008 Order, and as later expanded by the parties allowed to intervene, the Parties Consist of HECO Companies, the Division of Consumer Advocacy, Life of the Land ("LOL"), Hawaii Renewable Energy Alliance ("HREA"), Haiku Design & Analysis ("HDA"), Hawaii Holdings, LLC dba First Wind Hawaii ("First Wind"), DBEDT, Hawaii Solar Energy Association ("HSEA"), and Blue Planet Foundation ("Blue Planet").

"addresses all of the factors identified in their Agreement."<sup>3</sup> Since the Initiating Order, the Parties have engaged in extensive discovery and discussion to develop the decoupling proposal that was designed to address the issues raised in the Energy Agreement and the Commission's Initiating Order and the National Regulatory Research Institute's scoping paper. The Parties have also participated in the Commission's Panel Hearings held during the week beginning June 29, 2009 and addressed the issues set forth in the Commission's Order Establishing Hearing Procedures filed on June 16, 2009. Furthermore, the Parties have filed their opening and reply briefs in the instant proceeding.

Now, by Motion filed on November 25, 2009, the HECO Companies requested interim approval of modified versions of the Revenue Balancing Account ("RBA") and Revenue Adjustment Mechanism ("RAM") tariffs that serve to implement decoupling, asking that these tariffs remain in effect until revised interim rates are approved in the next round of rate cases for the HECO Companies.<sup>4</sup> HECO's Motion also proposes continuation of this Docket "...for the primary purpose of evaluating the design and potential adoption of clean energy-related decoupling performance metrics, with final statements of position to be filed by the parties no later than June 30, 2010."<sup>5</sup> The proposed modifications to the RBA and RAM tariffs are set forth in Attachments 1

---

<sup>3</sup> The "Agreement" refers to the Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies entered into on October 20, 2008 ("Energy Agreement").

<sup>4</sup> The next rate case for HECO would utilize a 2011 test year and HECO would commit to not file a 2010 test year rate case for HECO. For MECO and HELCO, the decoupling tariffs would become effective upon issuance of interim rate orders using the 2010 test year and would remain in effect until changed in the next subsequent base rate proceedings for each Company.

<sup>5</sup> HECO Motion, pages 2-3.

through 6 to HECO's Motion and are explained in the Companies' Memorandum In Support Of Motion. The proposed tariff changes include adding a refund provision for any disallowed Baseline Capital Project costs, simplification to utilize only one RBA account combining residential and commercial customers for each Company, and incorporation of a completely new "Interim Performance Incentive Mechanism" within the RAM provision.<sup>6</sup>

The Division of Consumer Advocacy ("Division" or "CA") respectfully submits its comments on the HECO Motion. The Division observes that the record in this Docket is extensive and complete and that the record supports the issuance of a Final Order in favor of decoupling and the RBA and RAM provisions that were proposed in the Joint Final Statement of Position submitted by the Consumer Advocate and the HECO Companies, with limited modification, for all of the reasons that were fully described in the Division's Opening and Reply briefs previously filed in this Docket.<sup>7</sup> There is no need for an Interim Order under these circumstances and the Division supports issuance of a Final Order at this time. The Division does not agree with HECO's proposal to continue this Docket so as to hold additional workshops and statements of position by the parties.

## **II. DISCUSSION.**

The Consumer Advocate continues to support the vision and the detailed design of decoupling that was carefully developed through interaction with the HECO

---

<sup>6</sup> See HECO's MEMORANDUM IN SUPPORT OF MOTION, pages 10-12, 21-22.

<sup>7</sup> September 8, 2009 and September 29, 2009, respectively.

Companies and other Parties and that was documented within the HECO/CA Joint Final Statement of Position ("JFSOP"). The procedural schedule in this Docket provided ample opportunity for interaction among the Parties, including white paper guidance from the Commission, workshops, information requests, initial and final statements of position and panel hearings. A detailed and complete record now exists and has been briefed in this Docket and the Commission has been fully advised of the advantages and disadvantages of decoupling at the broad policy level, as well as in the fine points of tariff language. The existing record is supportive of the issuance of a Final Order in favor of decoupling, approving the tariffs needed to implement decoupling.

**A. INTERIM RELIEF AND DOCKET CONTINUATION IS NOT NECESSARY.**

The procedural schedule in Docket No. 2008-0274 did not provide for interim implementation of decoupling or for any continuation of these proceedings after the close of hearings. The procedural schedule that was approved has been completed except for the issuance of the Commission's Order. No purpose will be served by adding more workshops and statements of position, as now proposed by HECO, in an *apparent search to find consensus regarding performance measures*. HECO has made no showing that the cost and burden of continuation of these proceedings will produce either consensus regarding HCEI performance measures or any more reasonable financial outcome than would result from Commission approval of the JFSOP with its next rate case review of HECO performance. The Commission should take the time it needs to arrive at its Final Order in this groundbreaking docket, acting upon the extensive record and the Parties' briefs to address all the issues that were timely raised

by the Parties and defended in the panel hearing. The Final Order should also reject HECO's invitation to implement a newly-created interim performance incentive mechanism that has not been subjected to critical examination by the Parties or presented in the panel hearings, for the reasons more fully discussed in Section D, below.

**B. INCLUSION OF ONE RBA ACCOUNT INSTEAD OF TWO.**

HECO's Memorandum in Support of Motion explains the simplification of administration and smoothing of customer impacts that could result from adopting one combined residential/commercial RBA account in place of the separate residential and commercial RBA accounts set forth in the JFSOP. HECO also correctly states that, "...the Consumer Advocate has no objection to this modification (see CA RB at 29)" and that "No objections to the use of a single RBA account have been raised by the other parties."<sup>8</sup> We concur in this modification, as noted in the Consumer Advocate Reply Brief, and urge its inclusion in the Commission's Final Order.

**C. REFUND OF DISALLOWED BASELINE CAPITAL PROJECT COSTS.**

HECO's Memorandum in Support of Motion also notes the concern raised at hearings regarding the potential for RAM revenue increases to include costs of Major Capital Projects or Baseline Capital Projects prior to any formal regulatory review of the

---

<sup>8</sup> HECO Companies' MEMORANDUM IN SUPPORT OF MOTION, page 11.

prudence or reasonableness of such costs.<sup>9</sup> RAM tariff revisions have previously been made to provide for refunds of cost recoveries for any subsequently disallowed Major Capital Projects. The complementary RAM tariff modifications have been offered by HECO in case there is a subsequent Commission disallowance of Baseline Capital Projects. We concur in this modification, as noted in the Consumer Advocate Reply Brief, and urge its inclusion in the Commission's Final Order.

#### **D. CLEAN ENERGY PERFORMANCE INCENTIVES.**

While the Parties in this Docket have agreed conceptually to decoupling and to many of the RBA/RAM specifications, no consensus has emerged on clean energy performance expectations, penalties or incentives. The matter of clean energy performance incentives was explored within two decoupling workshop sessions, was presented in statements of position, was debated within the panel hearings and was the subject of substantial discovery among the parties. The work done to date illustrates the tremendous uncertainties that continue to surround the complex legal, regulatory and technical processes involved in actually developing and integrating renewable resources. HECO's limited control over many of those processes and the existence of Renewable Portfolio Standards with penalty provisions supports a conclusion that the most appropriate forum for detailed analysis of RPS performance is within the next HECO rate case, at which time actual facts and performance can be analyzed without speculation regarding what level of performance should be expected.

---

<sup>9</sup> Id., pages 11 – 12.

The HECO Motion now proposes two revisions that are apparently aimed at expediting approval of decoupling while finessing the lack of consensus regarding clean energy performance measures. First, HECO seeks a continuation of the docket, stating, "...the consideration of some specific type of PIM is an important topic that should be further investigated, and will allow the parties more time to gather and share information regarding the actual decoupling and RAM implementation experience, and to review and develop appropriate metrics that would enhance decoupling, including the RBA and RAM in the future."<sup>10</sup> Second, as an apparent stopgap device while the proposed docket continuation occurs, HECO proposes a new Interim Performance Incentive Mechanism for Hawaiian Electric that was not part of its JFSOP with the Division, but was said to have been developed with "one of the other parties in the docket."<sup>11</sup>

HECO's proposed new Interim PIM would be based upon an Interim Performance Metric ("IPM" or "PIM") target of 40 megawatts, that HECO would need to "procure" between November 30, 2009 and December 31, 2010 through "...various procurement methods including power purchase agreements ("PPA"), NEM, Schedule Q and/or Feed-In Tariffs ("FIT") when approved by the Commission."<sup>12</sup> If HECO failed to procure the 40MW within the prescribed period, its 2011 RAM revenue increase amount would be subject to downward-only adjustments proportionate to the ratio of actual renewable MW procured divided by the 40MW target. There would be no

---

<sup>10</sup> HECO Companies Motion, page 19.

<sup>11</sup> HECO Companies' Motion at 22.

<sup>12</sup> Id. at 22.

up-side incentive for HECO to attempt to exceed 40 MW, because the total 2011 RAM revenue amount could not exceed the revenues calculated in the RAM tariff.<sup>13</sup>

There is also no evidentiary support for the newly proposed Interim Performance Incentive Mechanism ("PIM") now being proposed by HECO and this eleventh hour change to RBA/RAM should be rejected. HECO's Motion does not explain how the 40MW target was derived or why it is reasonable and does not clearly define whether procurement must be complete with the resource in service and producing power in order to count. These uncertainties, especially as it relates to the reasonableness of the target and what conditions must be met in order for the Commission to conclude that the target was achieved, should be addressed and should not be done so on a post-hoc basis. In the event the 40 MW target is overly optimistic and actual achieved results are lower, the RAM revenues intended for 2011 may be arbitrarily reduced to the financial detriment of HECO. On the other hand, if HECO is readily able to equal or exceed this proposed "target" with renewable projects already nearing fruition, no incentive is achieved because RAM revenues cannot exceed 100 percent of the amounts generated by application of RAM formulae. Alternatively, tying realization of RAM revenues to successful procurement of the 40MW target may encourage HECO to expedite contract negotiations on less than optimal terms, to the long term disadvantage of ratepayers. By way of comparison, the Exhibit captioned "HECO Timeline" to the Energy Agreement Among the State of Hawaii, Division of Consumer Advocacy of the Department of Commerce and Consumer Affairs, and the Hawaiian Electric Companies the ("HCEI Agreement") sets forth "Cumulative Target

---

<sup>13</sup> Id. 22-23.



Goals (MW by year-end) values that suggest more than 40MW of IPP, Photovoltaic, Solar and NEM projects totaling 46.5MW was actually part of HECO's commitment by 2010.<sup>14</sup> Thus, based on just this cursory analysis, the Consumer Advocate is concerned that the proposed metric would not actually produce the desired results, and may actually produce unreasonable financial results without regard to meaningful clean energy performance measurement.

Of course, it is nearly impossible at this time to predict the timing and outcomes for all of the regulatory provisions, technical and siting/interconnection issues and developer financial challenges that will influence the pace of actual renewable energy project completion and "procurement" by HECO. In this vacuum of accurate foresight, any implementation of potentially large RAM financial penalties to HECO if it should fail to achieve 40 MW by December 2010 is highly speculative. If fact, such penalties may incent HECO toward an unreasonably accommodative posture in negotiation of PPA terms, from which costs may flow through the proposed Purchased Power Adjustment mechanism, to the immediate and long-term advantage of ratepayers.

Provisions were made in the JFSOP to hold the HECO Companies fully accountable for their performance relative to RPS objectives and the other commitments made by the utilities in support of clean energy, as part of the formal review of decoupling coincident with the HECO 2011 rate case, when facts surrounding actual performance can be analyzed. The entire decoupling mechanism will be subject to formal review and a showing by the HECO Companies in the next HECO rate case to

---

<sup>14</sup> 30 MW was expected by 2010 for Kahuku Wind, 6.5 MW of PV was expected through feed-in tariff or PPA arrangements, 5.0 MW from Net Energy Metering and a total of 5.0 MW of "Solar Opportunity" was documented from Pay as you Save, PV Host Program and SB644.

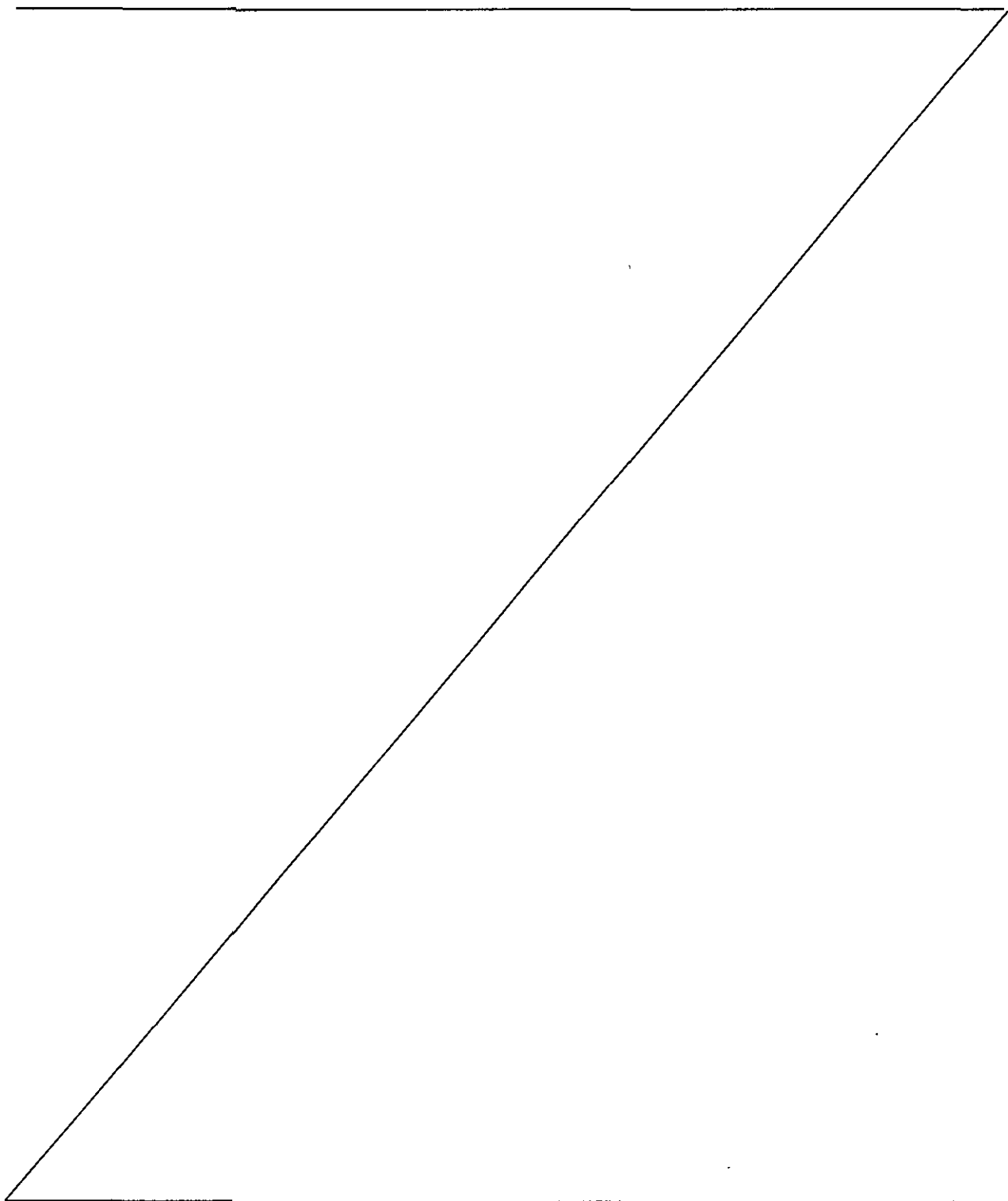
determine whether the mechanism should be continued or modified, including the filing of a report of the achievements and status of the HECO Companies' HCEI performance that is to be an integral part of that formal review.<sup>15</sup> This approach was determined to be appropriate by HECO and the Division because many of the factors impacting the pace at which customer-sited distributed generation and other renewable resources can actually be deployed are not controllable by the utility and because it is not presently possible to specify detailed performance expectations given several ongoing proceedings before the Commission that will influence the rate of deployment of renewable resources. The Division encourages issuance of a Final Order that adopts the Joint FSOP and the agreement therein for formal review of HECO's achieved HCEI performance as part of the global review of decoupling in the context of HECO's 2011 rate case.

To make clear, the Consumer Advocate is not adverse to the concept of performance metrics being incorporated within the regulatory process. In fact, the Consumer Advocate has considered and recommended the rigorous analysis of HECO's actual performance relative to Clean Energy expectations, in the next HECO rate case, to be used by the Commission as a basis to terminate, continue or modify decoupling. The potential loss of decoupling benefits by the HECO Companies, should they fail to perform reasonably relative to commitments made in the Agreement, will serve as a strong incentive for such performance. In this instance, however, due to the advanced state of the docket, the inability to thoroughly evaluate the proposed threshold

---

<sup>15</sup> Consumer Advocate Opening Brief at 32.

and related matters, the Consumer Advocate is concerned with the proposed continuation of the docket and inclusion of the proposed PIM.



### III. CONCLUSION.

Based upon the above, the Consumer Advocate hereby states that it objects to HECO's request for interim approval of decoupling tariffs RBA and RAM, so as to accommodate indefinite continuation of Docket No. 2008-0274 and additional rounds of workshops and statements of position. The record in this Docket is complete and has been briefed, such that a Final Order should be issued and the Docket closed when the Commission concludes its deliberations. With the understanding that the Commission is working to evaluate the existing record in order to file its Final Order in the instant proceeding as quickly as reasonably possible, requiring the evaluation of additional measures not thoroughly developed in the record might unnecessarily delay the filing of a Final Order. Additionally, adoption of HECO's newly proposed and unproven interim performance measure introduces the risk of unreasonable financial outcomes from *decoupling and/or perverse incentives unrelated to actual clean energy performance*. Thus, for the reasons stated above, the modifications to the RBA Provision and RAM Provision to adopt a single RBA accounting for each utility and to address potential Commission disallowances of major or baseline capital project costs are acceptable, but the Commission should not approve HECO's newly proposed Interim PIM modification.

DATED: Honolulu, Hawaii, December 11, 2009.

Respectfully submitted,

By Dean Nishina  
DEAN NISHINA  
Executive Director

DIVISION OF CONSUMER ADVOCACY

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S COMMENTS ON HECO'S MOTION FOR INTERIM APPROVAL OF A DECOUPLING MECHANISM FOR HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., AND MAUI ELECTRIC COMPANY, LIMITED** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

DARCY L. ENDO-OMOTO  
Vice President  
Government & Community Affairs  
Hawaiian Electric Company, Inc.  
P.O. Box 2750  
Honolulu, Hawaii 96840-0001

1 copy  
by hand delivery

DEAN MATSUURA  
MANAGER  
REGULATORY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
HAWAII ELECTRIC LIGHT COMPANY, INC.  
MAUI ELECTRIC COMPANY, LIMITED  
P.O. Box 2750  
Honolulu, HI 96840-0001

1 copy  
by hand delivery

JAY IGNACIO  
PRESIDENT  
HAWAII ELECTRIC LIGHT COMPANY, INC.  
P. O. Box 1027  
Hilo, HI 96721-1027

1 copy  
by U.S. Mail

EDWARD L. REINHARDT  
PRESIDENT  
MAUI ELECTRIC COMPANY, LTD.  
P. O. Box 398  
Kahului, HI 96733-6898

1 copy  
by U.S. Mail

THOMAS W. WILLIAMS, JR., ESQ.  
PETER Y. KIKUTA, ESQ.  
GOODSILL, ANDERSON QUINN & STIFEL  
Alii Place, Suite 1800  
1099 Alakea Street  
Honolulu, Hawaii 96813

1 copy  
by hand delivery

Attorneys for Hawaiian Electric Company, Inc., Hawaii Electric Light Company,  
Inc., and Maui Electric Company, Limited

RANDALL J. HEE, P.E.  
PRESIDENT AND CEO  
KAUAI ISLAND UTILITY COOPERATIVE  
4463 Pahe'e Street, Suite 1  
Lihue, HI 96766-2000

1 copy  
by U.S. mail

TIMOTHY BLUME  
MICHAEL YAMANE  
KAUAI ISLAND UTILITY COOPERATIVE  
4463 Pahe'e Street, Suite 1  
Lihue, HI 96766-2000

1 copy  
by U.S. mail

KENT D. MORIHARA, ESQ.  
KRIS N. NAKAGAWA, ESQ.  
RHONDA L. CHING, ESQ.  
MORIHARA LAU & FONG LLP  
841 Bishop Street, Suite 400  
Honolulu, Hawaii 96813

1 copy  
by hand delivery

Attorneys for Kauai Island Utility Cooperative

WARREN S. BOLLMEIER II  
PRESIDENT  
HAWAII RENEWABLE ENERGY ALLIANCE  
46-040 Konane Place 3816  
Kaneohe, Hawaii 96744

1 copy  
by U.S. mail

CARL FREEDMAN  
HAIKU DESIGN & ANALYSIS  
4234 Hana Highway  
Haiku, Hawaii 96708

1 copy  
by U.S. Mail

KELLY O'BRIEN  
VICE PRESIDENT, BUSINESS DEVELOPMENT, HAWAII  
HAWAII HOLDINGS, LLC, DBA FIRST WIND HAWAII  
810 Richards Street, Suite 650  
Honolulu, Hawaii 96813

1 copy  
by hand delivery

GERALD A. SUMIDA, ESQ.  
TIM LUI-KWAN, ESQ.  
NATHAN C. SMITH, ESQ.  
CARLSMITH BALL LLP  
ASB Tower, Suite 2200  
1001 Bishop Street  
Honolulu, Hawaii 96813

1 copy  
by hand delivery

Attorneys for Hawaii Holdings, LLC, dba First Wind Hawaii

MIKE GRESHAM  
HAWAII HOLDINGS, LLC dba FIRST WIND HAWAII  
33 Lono Avenue, Suite 380  
Kahului, Hawaii 96732

1 copy  
by U.S. mail

THEODORE PECK  
DEPARTMENT OF BUSINESS, ECONOMIC  
DEVELOPMENT, AND TOURISM  
State Office Tower  
235 South Beretania Street, Room 501  
Honolulu, Hawaii 96813

1 copy  
by hand delivery

ESTRELLA SEESE  
DEPARTMENT OF BUSINESS, ECONOMIC  
DEVELOPMENT, AND TOURISM  
State Office Tower  
235 South Beretania Street, Room 501  
Honolulu, Hawaii 96813

1 copy  
by hand delivery

DEBORAH DAY EMERSON, ESQ.  
GREGG J. KINKLEY, ESQ.  
DEPUTY ATTORNEY GENERAL  
DEPARTMENT OF THE ATTORNEY GENERAL  
STATE OF HAWAII  
425 Queen Street  
Honolulu, Hawaii 96813

1 copy  
by hand delivery

Attorneys for the Department of Business, Economic Development, and Tourism

MARK DUDA  
PRESIDENT  
HAWAII SOLAR ENERGY ASSOCIATION  
P.O. Box 37070  
Honolulu, Hawaii 96837

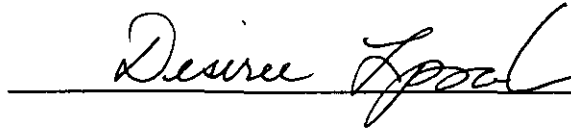
1 copy  
by U.S. Mail

DOUGLAS A. CODIGA, ESQ.  
SCHLACK ITO LOCKWOOD PIPER & ELKIND  
Topa Financial Center  
745 Fort Street, Suite 1500  
Honolulu, Hawaii 96813

1 copy  
by U.S. Mail

Attorney for Blue Planet Foundation

DATED: Honolulu, Hawaii, December 11, 2009.

A handwritten signature in cursive script, reading "Desiree Lopez", is written over a horizontal line.